
IN THE SUPREME COURT OF MISSOURI

Case No. SC86233

STATE OF MISSOURI, ex rel.,
THE SCHOOL DISTRICT OF KANSAS CITY, MISSOURI, et al.

Relators,

v.

HONORABLE J.D. WILLIAMSON,

Respondent.

RESPONDENT'S BRIEF IN RESPONSE TO
AMICUS CURIAE BRIEF OF EDISON SCHOOLS INC.

JAMES R. WYRSCH	MO #20730
STEPHEN G. MIRAKIAN	MO #29998
KEITH E. DRILL	MO #37065
WYRSCH HOBBS & MIRAKIAN, P.C.	
1101 Walnut, Suite 1300	
Kansas City, Missouri 64106	
816-221-0080 Telephone	
816-221-3280 Facsimile	
<i>Attorneys for Respondent</i>	

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RESPONSE TO STATEMENT OF INTERESTS

In pages 1 through 3 of its Substitute Brief, Amicus Curiae Edison Schools Inc. (hereinafter “Edison”) sets out, without reference to the record or other attribution, various contentions and claims relating to Edison’s contractual relationship with Westport Community Secondary Schools, Inc. (hereinafter “Westport”). Westport generally disputes Edison’s statements to the extent that they would suggest that Edison favorably performed its contractual obligations under the agreement with Westport pursuant to which Edison managed the day-to-day affairs of Westport’s charter school, or that Westport has refused to pay Edison more than \$11 million allegedly owed to it (Edison’s Amicus Brief at 3). Rather, Westport had a number of substantial performance-related disputes and issues with Edison over the contractual relationship, which resulted in an agreement that Westport would assume responsibility for operation of the charter school, prior to the end of the 2003-04 school year. These disputes also resulted in litigation between Westport and Edison.

While Edison correctly states in footnote 1 on page 3 of its Amicus Brief that the contractual claims between Westport and Edison are the subject of a pending arbitration proceeding, pursuant to an order of the United States District Court for the Western District of Missouri in *Edison Schools Inc. v. Westport Community Secondary Schools, Inc.*, Case No. 03-1110-CV-W-ODS ordering arbitration pursuant to the contractual agreements, Edison fails to disclose: (1) that Westport has categorically denied that it owes Edison anything based on claims that Edison failed to perform its contractual obligations; and (2) that the amount of Westport’s counterclaim, if successful, could exceed the amount of money claimed by Edison.

Thus, Edison's claim of interest in the outcome of this litigation must be viewed in light of its position as a party to separate and unrelated litigation with Westport. Therefore, Edison's claims of interest derived from "an ownership interest in equipment, educational resources, and its proprietary academic materials located in the building currently being used by Westport" (Amicus Brief at p. 3) are already the subject of separate litigation between Edison and Westport. Excluding those "interests" from the analysis leaves only Edison's "philosophical interest" (Amicus Brief at 3) as a for-profit operator of secondary schools, which Westport submits is no valid interest at all.

In reality, Edison has no legitimate claim of interest in the outcome of this litigation, and its amicus curiae brief provides no weight to the Court in resolving the pending dispute. Edison originally filed a motion to intervene in the Circuit Court case and monitored the evidentiary hearing on Westport's motion for preliminary injunction. Thereafter, the Respondent gave Edison to option of intervening in the case, but Edison declined to do so. As Edison chose not to pursue its legal positions in the trial court, this Court should not give significant weight to those arguments now.

As stated above, pursuant to the order of the United States District Court, Edison's contractual claims with Westport (and Westport's defenses and counterclaim) are now the subject of an arbitration proceeding. Respondent's injunction order in no way affects Edison's position in that arbitration or any of Edison's claims.

In any event, the competing claims of Edison and Westport have no bearing on the question now before this Court of whether the Respondent had jurisdiction to entertain

Westport's claims or exceeded its jurisdiction by granting the preliminary injunction. As the Respondent specifically found, the Charter Agreement between Westport and the District consists entirely of the Charter Application and the letter from the Kansas City, Missouri School District accepting the Charter Application. Though the Charter Application refers to Westport's intent to enter into an agreement with Edison for Edison to manage school operations on behalf of Westport, the Charter Agreement itself was neither expressly nor implicitly contingent upon Westport entering into an agreement with Edison or to the continued existence of such an agreement. The written Operating Agreement that Westport entered into with Edison, which is now terminated, was not incorporated into the Charter Agreement. Thus, Edison stands in no greater position of interest in this litigation than would any other vendor providing services to Westport as the operator of a charter school.

This dispute turns on questions of interpretation of Missouri statutes governing the granting, renewal, and the termination of charter agreements. Edison's Amicus Curiae Brief essentially restates the same arguments asserted by the Relators.¹ Thus, Westport's Substitute Brief in response to the Relator's Substitute Brief fully encompasses Westport's response to Edison's arguments as well, and Westport incorporates that Brief herein by this reference as if more fully set forth herein in response to the substantive arguments made by Edison.

¹In fact, Edison's Amicus Curiae Brief is verbatim identical to the Suggestions it filed in the Court of Appeals.

CONCLUSION

In view of the foregoing, it is respectfully suggested that the matters discussed in the Edison's Amicus Brief are without merit and should not be further considered by this Court.

Respectfully submitted,

WYRSCH HOBBS & MIRAKIAN, P.C.

By:

JAMES R. WYRSCH MO#20730

STEPHEN G. MIRAKIAN MO#29998

KEITH E. DRILL MO#

1101 Walnut, Suite 1300

Kansas City, Missouri 64106

Tel: (816) 221-0080

Fax: (816) 221-3280

Attorneys for Westport Community

Secondary Schools, Inc.

CERTIFICATE OF SERVICE

The undersigned does hereby certify a true and correct copy of the above and foregoing and a disk containing the brief were hand delivered this ____ day of September, 2004, to:

Allan V. Hallquist
Hayley E. Hanson
Kirsten A. Byrd
Blackwell Sanders, et al.
1000 Two Pershing Square
2300 Main Street
Kansas City, Missouri 64108
(two copies)

The Honorable J.D. Williamson, Jr.
Circuit Court Judge, Division 11
Jackson County Circuit Court
415 E. 12th Street
Kansas City, Missouri 64106

Brian Wood
Wickham & Wood, LLC
4240 Blue Ridge Blvd., Suite 350
Kansas City, Missouri 64133

Jean Paul Bradshaw
Patrick Fanning
Lathrop & Gage, LC
2345 Grand, Suite 2800
Kansas City, Missouri 64108

Jennifer J. Coleman
Stinson Morrison Hecker, LLP
1201 Walnut, Suite 2900
Kansas City, MO 64106

and a copy by United States mail, postage prepaid, this 3rd day of September, 2004, to:

Melissa Randol
Susan Goldammer
2100 I-70 Drive SW
Columbia, Missouri 65203

**Attorney for Westport Community
Secondary Schools, Inc.**

CERTIFICATE OF COMPLIANCE

PURSUANT TO MO. R. CIV. P. 84.06(c) and 84.06(g)

I hereby certify that the above and foregoing brief includes the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b), and contains 865 words.

I also hereby certify that the floppy disk containing the above and foregoing which is being filed concurrently herewith has been scanned for viruses using Trend Micro OfficeScan Corporate Edition and there were no viruses detected.

Attorney for Westport Community
Secondary Schools